

**Town of Amherst**  
**Zoning Board of Appeals - Special Permit**

*DECISION*

**Applicant:** Robert Lowry  
8 North Leverett Road  
Amherst, MA 01002

**Property owner:** 17 Kellogg Avenue, LLC (book 9938, page 324)  
25 North Pleasant Street, Amherst, MA, 01002

**Date application filed with the Town Clerk:** February 4, 2010

**Nature of request:** Request for a Special Permit to transfer ownership of an existing Class II restaurant (ZBA FY2004-00029), with no changes, under Section 10.34 of the Zoning Bylaw

**Address:** 17 Kellogg Avenue (Map 14A, Parcel 64, B-G, MP, DR Zoning Districts)

**Legal notice:** Published on February 10, 2010 and February 17, 2010 in the Daily Hampshire Gazette and sent to abutters on February 5, 2010

**Board members:** Eric Beal, Barbara Ford, Tom Ehrgood

**Submissions:**

- Project Application Report, dated February 19, 2010;
- The ZBA application filed with the Town Clerk on February 4, 2010;
- A Management Plan;
- A proposed Site Plan/Floor Plan showing the interior and exterior layout and seating arrangements;
- A photograph of the existing Rao's sign and DRB approval (1994);
- A Town GIS map showing location of adjacent residential uses;
- A complete copy of ZBA FY2004-00029 including approved Management Plan, signs, exterior seating plan, interior floor plan, and Fire Department Review dated February 10, 2004;
- Fire Department Review, via email, dated February 15, 2010;
- DRB application and detail of new furniture for reference.

**Site Visit:** February 23, 2010

Eric Beal and Tom Ehrgood met at the site. Barbara Ford viewed the site separately. The Board members observed the following:

- The existing, two-story brick building on the south side of Kellogg Avenue and adjacent to Boltwood Walk which currently contains a Class II restaurant, Rao's Coffee, on the first floor and other commercial space on the second floor;
- The existing interior layout of the restaurant, including seating arrangement, service counters, restrooms and entrances and exits;

- The south and west side of the exterior where the outdoor dining is proposed;
- The approximate location of the south property line, 2-3 feet from the existing parking area and generally aligned with the existing municipal light-post.
- The existing rear entrance, two (2) 55 gallon drum containers appearing to store waste cooking oil, and the existing location of the dumpster occupying the first two parking spaces on Boltwood Walk.

**Public Hearing:** February 25, 2010

Staff identified that new information was submitted to the Board, including the following:

- An email communication from Bonnie Weeks, Building Commissioner, dated February 24, 2010, which indicates that the outdoor dining shall be situated on private property and arranged to provide 42 inches of clear access from the exit doors to the public way or parking area.
- An email communication from Christine Brestrup, Senior Planner, dated February 24, 2010, which indicates that the Design Review Board had reviewed and approved the proposed outdoor dining. The approval recommends that the outdoor dining furniture be of a color other than white.
- A revised floor plan reflecting a modified interior seating arrangement showing the removal of a half wall and slightly different table arrangement, submitted by the applicant;
- A copy of the Agreement Clarifying Easement Rights, Book 9739 and Page 180 regarding the dumpster, submitted by the applicant.

Mr. Lowry presented the application. He was accompanied by Jeffery Waskiewicz, the current owner. Mr. Lowry stated the following:

- The existing Special Permit, issued in 2004, is conditioned such that it expires upon change of ownership and that a new Special Permit is required to reflect the new ownership;
- This application is to replace the expired permit under which Rao's Coffee has operated under Mr. Waskiewicz.
- An updated, floor plan including interior and exterior seating and Management Plan have been submitted;
- The floor plans and Management Plan are very similar to the previously approved Management Plan, but differ as follows:
  - Removal of an existing half wall, currently used as a service counter, which will allow for seats to be positioned in that location.
  - The outdoor dining plan now shows 39 seats along the west side and 26 seats at the south side of the building, where the previous Special Permit stated there would be 36 seats and 29 seats respectively.

The Board members confirmed the following:

- The outdoor dining is situated on private property. Although the submitted floor plan does not indicate the exact location of the property line, the Town's GIS maps in combination with the approved plans for Boltwood Walk (Amherst Redevelopment Authority survey, revised July 2, 1976) were reviewed. The Board concluded that the location of the outdoor dining on the floor plan will be on private property.
- The number of interior seats will not exceed the previously approved number of 97 seats.
- The number of exterior seats will not exceed the previously approved number of 65 seats.
- There is not a public right of way along the west side of the building, however, the outdoor dining furniture should be positioned so as to maintain an area for clear pedestrian passage.
- The new outdoor dining furniture will be stored indoors during the winter season.

- The two 55 gallon drums at the back of the building, which contain waste grease, are not associated with Rao's.
- The location of the existing dumpster is allowed and subject to an easement agreement with the property owners and the Town. The dumpster is utilized by Rao's as well other tenants. This arrangement was created during the development of Boltwood Walk.
- There are no changes to the existing sign.

Mr. Ehrgood MOVED to close the evidentiary portion of the public hearing. Ms. Ford seconded the motion and the Board VOTED unanimously to close the public hearing.

**Public Meeting:**

The Board members determined the following:

- The revised interior and exterior floor plans, although arranged differently, do not exceed the maximum number of seats.
- There are no changes to the hours of operation, number of employees, exterior, signs or general type of menu/service;
- The outdoor dining should be designed and maintained in accordance with Section 5.041 of the Zoning Bylaw;
- Some of the conditions should be crafted to allow for the Building Commissioner to determine whether changes are substantial enough to require review and approval by the Board;
- The delivery of goods and services will be from the front of the establishment as indicated in the Management Plan and that specific hours of delivery would be too restrictive.

**Specific Findings:**

The Board found under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, that:

10.380 & 10.381 - The proposal is suitably located in the neighborhood in which it is proposed and is compatible with existing Uses and other Uses permitted by right in the same District. The proposal is located in the central business district, it is surrounded by similar uses and the space has been used as a restaurant since 1992.

10.382 & 10.383 - The proposal would not constitute a nuisance due to air and water pollution, flood, noise, odor, dust, vibration, lights, or visually offensive structures or site features and the proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians. There are no substantial changes to the operation of the Class II restaurant under the new ownership. The permit does not allow live or pre-recorded music in the outdoor dining area in order to mitigate potential noise impacts. The outdoor dining area will be designed and maintained in accordance with Section 5.041 of the Zoning Bylaw and the permit has been conditioned such that a clear area will be maintained for pedestrian passage.

10.384 & 10.385 - Adequate and appropriate facilities would be provided for the proper operation of the proposed use and reasonably protects the adjoining premises against detrimental or offensive uses on the site, including air and water pollution, flood, noise, odor, dust, vibration, lights or visually offensive structures or site features. The permit is conditioned to require that the existing planter box be maintained in good condition and the landscaping therein will be maintained by a professional landscaping company. The permit does not allow live or pre-recorded music in the outdoor dining area in order to mitigate potential noise impacts. The permit is conditioned such that the management of the restaurant shall monitor and pick up any litter on the subject property and nearby pocket park. The permit is conditioned to ensure that adequate areas for pedestrian passage will be maintained. There are no changes to the existing odor control devices as part of this proposal.

10.386 & 10.387 - The proposal ensures that it is in conformance with the Parking and Sign regulations (Articles 7 and 8, respectively) of this Bylaw and provides convenient and safe vehicular and pedestrian movement within the site, and in relation to adjacent streets, property or improvements. The proposal does not include any changes to the existing signs. The property is located within the Municipal Parking District and the use is exempt from the parking requirements in accordance with Section 7.43 of the Zoning Bylaw. The outdoor dining seating will be maintained in accordance with the requirements of Section 5.041 which require clear and safe passage by pedestrians.

10.388 & 10.389 - The proposal ensures adequate space for the off-street loading and unloading of vehicles, goods, products, materials and equipment and provides adequate methods of disposal and/or storage for sewage, refuse, recyclables, and other wastes resulting from the uses permitted. The deliveries of goods and services will occur at the front of the site, in accordance with the approved Management Plan. All refuse and waste will be deposited in the dumpster at the rear of the building and recyclables and other wastes will be stored in the basement. Waste oil storage facilities are not necessary as there will be no deep fat frying on the premises. The property is connected with town sewer to provide adequate disposal of sewerage associated with the use.

10.392 & 10.393 - The proposal provides adequate landscaping, including the screening of adjacent residential uses and provides protection of adjacent properties by minimizing the intrusion of lighting. The existing planter box and associated landscaping shall be professionally maintained as identified in the approved Management Plan. There are no changes to the existing lighting as part of this permit.

10.398 - The proposal is in harmony with the general purpose and intent of this Bylaw. The proposal with conditions is in harmony with the general purpose of the bylaw and has a positive effect on the downtown area and provides a safe environment for gathering outside, especially during the warmer months.

#### **Public Meeting – Zoning Board Decision**

Mr. Ehrgood moved to APPROVE the application with conditions. Ms. Ford seconded the motion.

For all of the reasons stated above, the Board VOTED unanimously to grant a Special Permit for the continued operation of a Class II restaurant, known as Rao's Coffee, under new ownership, under Section 3.352.1, with outdoor dining under Section 5.041 of the Zoning Bylaw, at 17 Kellogg Avenue (Map 14A, Parcel 64, B-G, MP, DR Zoning District) with conditions.

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ERIC BEAL

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BARBARA FORD

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TOM EHRCOOD

FILED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2010 at \_\_\_\_\_,  
in the office of the Amherst Town Clerk \_\_\_\_\_.  
TWENTY-DAY APPEAL period expires, \_\_\_\_\_ 2010.  
NOTICE OF DECISION mailed this \_\_\_\_\_ day of \_\_\_\_\_, 2010  
to the attached list of addresses by \_\_\_\_\_, for the Board.  
NOTICE OF PERMIT or Variance filed this \_\_\_\_\_ day of \_\_\_\_\_, 2010,  
in the Hampshire County Registry of Deeds.

**Town of Amherst**  
**Zoning Board of Appeals**

*SPECIAL PERMIT*

The Amherst Zoning Board of Appeals hereby grants a Special Permit for the continued operation of a Class II restaurant, known as Rao's Coffee, under new ownership, under Section 3.352.1, with outdoor dining under Section 5.041 of the Zoning Bylaw, at 17 Kellogg Avenue (Map 14A, Parcel 64, B-G, MP, DR Zoning District) with the following conditions:

1. The Class II restaurant shall be operated and managed according to the Management Plan approved at the Zoning Board of Appeals on February 25, 2010. Any substantial changes to the operation of the restaurant shall be submitted to the Board for review and approval at a public meeting.
2. Indoor seating shall not exceed 97 and shall be implemented in accordance with the floor plan approved on February 25, 2010. Any substantial changes to the arrangement of the indoor dining shall be submitted to the Board for review at a public meeting.
3. Outdoor seating shall not exceed 65 seats; 39 seats positioned on the west side of the building and 26 seats on the south side of the building and shall be implemented in accordance with the floor plan approved on February 25, 2010. Any substantial changes to the arrangement of the outdoor dining shall be submitted to the Board for review at a public meeting.
4. The location of the outdoor dining on the west side of the property shall extend no closer than 2 feet from the inside of the west property line and be arranged such that an exit discharge area of 42 inches in width be provided from the exit doors to the public way or the parking area.
5. The outdoor dining shall be implemented in accordance with all applicable requirements of Section 5.041 of the Zoning Bylaw. The outdoor dining furniture shall be stored indoors from November 1 to April 1.
6. The outdoor dining furniture shall be of a size and design as approved by the Design Review Board on February 23, 2010.
7. The outdoor dining area on the south side of the building shall close at 10:00 p.m.
8. Litter, including cigarette butts, shall be removed from the outdoor seating areas. There shall be outdoor trash receptacles located as shown on the plan approved on February 25, 2010. The outdoor seating areas, the pocket park, and the area in Boltwood Walk between the steps of Panda East and Kellogg Avenue shall be monitored for litter a minimum of once a day.
9. The cedar planter box and associated landscaping shall be permanently maintained in good condition and in accordance with the approved Management Plan.

10. Any substantial change to the exterior of the building, including signs or lighting shall be reviewed by the Design Review Board, then submitted to the Zoning Board of Appeals, for review and approval prior to installation.
11. There shall be no deep fat frying on the premises.
12. The number of employees shall not exceed 6 during any one shift.
13. The hours of operation shall be 6 a.m. to 12 a.m. Sunday through Wednesday and 6 a.m. to 2 a.m. Thursday through Saturday.
14. There shall be no outdoor music or amplified sound.
15. The management shall be responsible for snow removal on private property.
16. This permit shall expire upon change of ownership or management.

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ERIC BEAL, Acting Chair  
Amherst Zoning Board of Appeals

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DATE